IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10390 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJ PROCESSORS THROUGH SOLE PROPRIETOR

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10390 of 2004

MR MIHIR JOSHI for MR DHAVAL SHAH for Petitioner No. 1

MR JITENDRA MALKAN for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 27/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Rule. Learned Standing Counsel, Mr.Jitendra Malkan waives service of rule for respondents.

#. The petitioner has challenged in this petition the impugned order dated 10.5.2004 (Annexure-E) passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai (for short "the Tribunal") whereby the learned Tribunal refused to condone the delay of 84 days and thereby dismissed the application for condonation of delay (Annexure-D) in Appeal No.F/814/04 on the ground that delay was not sufficiently explained.

#. Mr.Joshi learned counsel for the petitioner vehemently submitted that the petitioner had explained delay of 84 days in his application (Annexure-D) wherein it has been stated that Mr.Kishor Agrawal, Sole Proprietor of M/s.Manoj Processors was advised complete bed rest between the period from 10.12.2003 to 23.2.2004 for which medical certificates were also issued. But, unfortunately, the learned Tribunal has simply discarded the same by stating that the said certificates do not inspire any confidence. In our considered opinion the approach of the learned Tribunal was wholly erroneous in discarding the medical certificates in this fashion. One more ground assigned by the learned Tribunal in its order for rejecting the application for condonation of delay in the impugned order at Annexure-E is that there was authorized signatory of the proprietary concern and, therefore, the proprietor could have been directed or instructed his authorized signatory to prefer the appeal and file it before the Tribunal within the statutory period of limitation. This suggests the condition of the sole proprietor of the petitioner was good, which in fact not correct. If the sole proprietor of the petitioner firm was bed ridden and advised complete bed rest for couple of months, then one cannot even expect this type of approach.

#. In case of Collector, Land Acquisition, Anantnag vs. Mst.Katiji reported in AIR 1987 SC 1353 Hon'ble Supreme Court held that ordinarily a litigant does not stand to benefit by lodging an appeal late and refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when the delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The Hon'ble Supreme

Court has further observed that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Last but not the least the Hon'ble Supreme Court observed that it must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

#. There are cases and cases where delay may be condoned and there are some cases in which delay cannot be condoned. It all depends on facts of each case. Coming to the facts of the case on hand, we are fully convinced that the petitioner had sufficiently explained delay of 84 days. When the case of the petitioner is duly supported by authentic evidence in form of medical certificates, then in our considered opinion, the learned Tribunal ought to have straightaway condoned the delay and decide the appeal. We have also noticed from the order of the learned Tribunal that there was opposition for condonation of delay by the representative of the Department for which we feel sorry.

#. At the cost of repetition, we may state that both the grounds stated by the learned Tribunal in its order for not condoning the delay of only 84 days were not at all proper and legal.

#. In view of the above discussion, this petition is allowed and the impugned order at Annexure-E passed by the learned Tribunal dismissing the application for condonation of delay (Annexure-D) filed in appeal before the Tribunal is hereby quashed and set aside and the application (Annexure-D) filed before the Tribunal is allowed. The learned Tribunal is now directed to take up the main appeal along with stay application filed in it and decide the same in accordance with law. Rule is made absolute. On the peculiar facts of the case, there shall be no order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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